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SLAVERY IN CALIFORNIA

Slavery in California prior to the Mexican War was slavery in the Spanish possessions. The Spaniards began with the enslavement of Indians and later at the advice of De las Casas changed to that of Negroes.¹ This system was first used in the West Indies and later extended to other colonies. It is said that about the year 1537, Cortes fitted out at the port of Tehuantepec, several small vessels, provided with everything required for planting a colony and sailed north to the head of the Gulf of California, transporting four hundred Spaniards and three hundred Negro slaves, that he had assembled for that purpose.² This is the first mention of Negro slavery in California. After the founding of the Mission of San Carlos by the president, Father Junipero Serra, with a community of twenty-three friars, we read that the first interment in the cemetery was that of Ignacio Ramirez, a former mulatto slave from San Antonio, who had money to purchase his freedom.³ There were too a number of Negro slaves brought to California between these periods. They came on trading ships and with various expeditions, which they usually deserted after reaching the State. Hittell is wrong, therefore, in saying that the first slave in California was brought there in 1825 when the wife of Antonio José de Cot, a Spaniard, brought with her a slave girl named Juana, fourteen years of age, from Lima to San Francisco. He doubted even that this was the first slave in California for the lady expressed her intention to avail herself of the first opportunity to leave.⁴

Spain did not especially bother about Negro slavery in her Pacific coast territory for nearly two hundred years be-

¹ Bourne, "*Spain in America*," 271.

² *California Miscellany*, I, 9.

³ Bancroft, "*History of California*," I, 175; *Place Notices*, I, 151.

⁴ Hittell, "*History of California*," II, 115.

fore the coming of the Americans. She promised by the treaty of September 30, 1817, to abolish the slave trade October 31, 1820, in all Spanish territory. In 1821, however, certain of the northern colonies of Spain in America established their independence as the United States of Mexico.⁵ Three years later the importation of slaves from foreign countries was prohibited and children of slave parents were declared free. Notwithstanding this there set in considerable emigration from the Southern States followed by an agitation for the acquisition of Texas. In 1827, therefore, Coahuila and Texas were organized as a State with a law prohibiting slavery. As this, however, did not check the immigration, President Guerro issued a decree⁵ in 1829 abolishing slavery in Mexico on the occasion of the celebration of the independence of Mexico and in 1830 ordered a military occupation of the State to enforce the anti-slavery measure.⁴ But the aggressive southerner ever endeavoring to extend the territory of slavery had all but won the day in Texas. In 1836 Texas declared itself a republic with a constitution permitting the introduction of slavery and forbidding the residence of free Negroes without the consent of its Congress. Then came the Mexican War resulting in the defeat of Mexico and the cession to the United States of a vast territory of which California was the most valuable part.

It is clear, therefore, that at the time the United States government acquired the territory of California from Mexico, slavery had been abolished there nearly twenty years. The pro-slavery party, however, did not consider this action of Mexico a finality in the settlement of the slavery question in the new possessions. When a bill providing for the purchase of this territory was laid before the house, David Wilmot, of Pennsylvania, after consultation with other northern democrats, offered the following amendment:

⁵ Garrison, "*Westward Extension*," 26.

“Provided that an express and fundamental condition to the acquisition of any territory from the republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime whereof the party shall first be duly convicted.”⁶

This proviso was adopted by a vote of 83 to 64. The bill carrying this proviso was then reported to the Senate where followed a heated debate which lasted until adjournment, the proviso being killed in the midst of stormy scenes in Congress.⁷ This discussion showed that few statesmen believed that slavery would be profitable in California. They were not unlike Daniel Webster who, while speaking on the admission of the State of Texas, said that slavery was effectually excluded from California and New Mexico by a law even superior to that which admits and sanctions it in Texas. He meant the law of nature. The physiographic conditions of the country would forever exclude African slavery there; and it needed not the application of a proviso. If the question was then before the Senate he would not vote “to add a prohibition—to reaffirm an ordinance of nature, nor reenact the will of God.”⁸

The coming and going of the Negro in California did not especially interest any one until the beginning of the immigration of the forties. The subject of slavery in California was officially called to the attention of the inhabitants through the issuance of a proclamation by the Commander in Chief of the District in regard to the unlawful enslaving of the Indians. He was endeavoring to protect them, but they were enslaved⁹ in spite of his efforts. The

⁶ *Cong. Globe*, 29 Cong., 2 Sess., 509.

⁷ Garrison, “*Westward Extension*,” 254–268, 284–314. *Cong. Globe*, 29 Cong., 2d Sess., 178, 453, 455; 30 Cong., 1st Sess., 875, 989, 910, 1002–1005, 1062, 1081; 2d Sess., 216, 381.

⁸ Tuthill, “*Hist. of California*,” 312, 316.

⁹ PROCLAMATION TO THE INHABITANTS OF CALIFORNIA.

It having come to the knowledge of the Commander in Chief of the District that certain persons have been and still are imprisoning and holding to service

legislature undertook to perpetuate this system by enacting a law permitting the enslavement of Indians, the only condition upon the master being a bond of a small sum, that he would not abuse or cruelly treat the slaves. Under the provision of the same law, Indians could be arrested as vagrants and sold to the highest bidder within twenty-four hours after the arrest, and the buyer had the privilege of the labor for a period not exceeding four months.¹⁰ An Indian arrested for a violation of a law could demand a jury trial, but could not testify in his own behalf against a white person. If found guilty of any crime, he could either be imprisoned or whipped, the whipping not to exceed twenty-four lashes.¹¹

Later there was a steady influx of southerners and their Negro slaves into the territory of California, after the country was taken over by the United States. Then came the question as to the enslavement of the Negro. The situation became serious after the Congress of the United States appropriated three millions of dollars for the purchase of the new territory, and still more so after gold was discovered there. Mexican rule ended with the cession of the territory to the United States; and yet session after session of Congress adjourned without giving California a territorial

Indians against their will and without any legal contract for service. It is thereby ordered that all persons so holding or detaining Indians shall release them, and permit them to return to their own homes. Unless they can make a contract with them which shall be binding upon both parties. The Indian population must not be regarded in the light of slaves, but it is deemed necessary that the Indians within the settlement shall have employment, with the right of choosing their own master and employment. Having made such a choice they must abide by it, unless they can obtain permission in writing to leave, or the Justice in their complaint shall consider they have just cause to annul the contract and permit them to obtain another employee. All Indians must be required to obtain service and not be permitted to wander about the country in idleness in a dissolute manner. If found doing so they will be liable to arrest and punishment by labor on the public works at the direction of the Magistrate. All officers, Civil or Military under my command are required to execute the terms of this order and take notice of every violation thereof.—Given at headquarters in Yerba Buena.—Signed, John Montgomery. Sept. 15, 1846. Published for the Government of all concerned. Washington A. Bartlett, Magistrate of San Francisco, Sept. 15, 1846.—*California Star*, Sept. 15, 1846.

¹⁰ California Laws, 1849–50, p. 408.

¹¹ *Ibid.*, p. 408.

form of government. The question of slavery in the newly acquired territory divided Congress so that they could not decide the issue. Southern newspapers were advertising for slave-owners to send names and the number of slaves they were taking to California to found a *New Colony*.¹²

The settlers were divided. Some came because they either disliked slavery, or were too poor to own slaves. They recognized the possibilities for making California a free State and did not care to be designated *Poor White Trash* by masters who were being allowed to fill the State with Negro slaves to constitute the basis of an aristocracy like that in the South. There were other inhabitants in California at the time who, being slave-owners, were southern sympathizers. They were determined either to have slavery in California or make a desperate effort before seeing the territory given up as a free State.¹³ It did not require very much investigation, however, to show that the pro-slavery party was in the minority. The editor of the *Californian* said in May, 1848, that he voiced the sentiments of the people in California in saying that slavery was neither needed nor desired there. A correspondent of this paper hoping to hold that section for free labor said: "If white labor is too high for agriculture, laborers on contract may be brought from China." Referring to the proposal to make the commonwealth a slave State Buckelew said: "We have not heard one of our acquaintance in this country advocate this measure and we are almost certain that 97-100 of the present population are opposed to it." Again it is remarked in this paper: "We left the slave states because we did not like to bring up a family in a miserable, can't-help-one's-self condition," and dearly as he loved the union, he would prefer California independent to seeing her a slave State.¹⁴

The lack of law and order and fear of the southern slave-owners with their herds of Negro slaves finally led to the

¹² Bancroft, "*History of California*," VI, p. 313.

¹³ *Ibid.*, p. 313.

¹⁴ *The Californian*, March 16 and Nov. 4, 1848.

call of the Constitutional Convention. The question of slavery there was not so much debated in that body as was expected. Some excited pro-slavery leaders were talking of an independent *Pacific Republic*. The southern faction in the convention was led by a Mr. Gwyn, who afterwards became a United States Senator from California, and the northern element was ably represented by a Mr. Broderick, who later was chosen State Senator.¹⁵ The convention finally drafted their constitution with a section which provided that "neither slavery nor involuntary servitude unless for the punishment of crime shall ever be tolerated in this state."

The pro-slavery faction in the convention was determined to have slavery somewhere and had managed to have the eastern boundary of California so designated that it extended as far as the Rocky Mountains. This would have resulted in rejection by Congress, or a division of the territory into a Northern and a Southern California, giving the pro-slavery element a new State. The unwieldy boundary, however, was discovered in time to have it changed, but not until after much debate, which almost wrecked the constitution. The California representatives elected by the convention left for Washington, where they presented to Congress the constitution and the petition of the California settlers asking for admission as a State. There had never been a precedent for their act. Yet the settlers in California felt perfectly justified, since it was their only safeguard against the pro-slavery leaders who were bringing their slaves into the territory.

Leaders at the national capital naturally hesitated, not knowing whether or not the admission of California under the conditions thus obtaining would aggravate or improve the national situation. California, however, cared little about the national situation, as is attested by the resolutions of 1850 to the effect: "That any attempts by congress to interfere with the institution of slavery in any of the territories of the United States would create just grounds of

¹⁵ Bancroft, "*History of California*," p. 287.

alarm in many of the States of the union; and that such interference is unnecessary, inexpedient, and in violation of good faith; since, when any such territory applies for admission into the union as a state, the people thereof alone have the right, and should be left free and unrestrained, to decide such question for themselves." Broderick moved the insertion of the following: "That opposition to the admission of a state into the union with a constitution prohibiting slavery, on account of such prohibition, is a policy wholly unjustifiable and unstatesmanlike, and in violation of that spirit of concession and compromise by which alone the federal constitution was adopted, and by which alone it can be perpetuated." This amendment was adopted.¹⁶

After a debate of four months Congress admitted California as a free State as one of five compromises. Jefferson Davis, however, repudiated the idea of advantage to his section. He said: "Where is the concession to the South? Is it in the admission, as a state, of California, from which we have been excluded by congressional agitation? Is it in the announcement that slavery does not and is not to exist in the remaining territories of New Mexico and California? Is it in denying the title of Texas to one half of her territory?" He held that gold washing and mining was particularly adapted to slave labor, as was agriculture that depended on irrigation.¹⁷ The day after the admission certain southern senators sent to that body a *Protest* against the injustice of the act of Congress, admitting California as a free State. The Senate refused the clerk permission either to read or record it. Whereupon the newspapers began publishing articles of severe criticism and talked of dividing the Union. Jefferson Davis went before the United States Senate and, addressing it, called attention to these comments, adding that so much outside criticism was doing more to divide the Union than the *Protest* would possibly do. Congress finally voted that the *Protest* be recorded.¹⁸

¹⁶ *Jour. Cal. Leg.*, 1850, 372-373.

¹⁷ *Cong. Globe*, 1849-50, App., pt. I, 149-157.

¹⁸ Tuthill, "*History of California*," p. 320.

Was this to be a free State in every sense of the word? This was the day when the slave power "was covertly grasping at the Spanish-speaking countries beyond the Rio Grande, as it had at the lands beyond the Sabine."¹⁹ At first, it was not, for a good many slaves were brought into the State. On April 1, 1850, an advertisement appeared in the *Jackson Mississippian* referring to *California, the Southern Slave Colony* and inviting citizens of slave-holding States, wishing to go to California, to send their names, number of slaves, time of contemplated departure, etc., to the *Southern Slave Colony*, of Jackson, Mississippi. The design was to settle in the richest parts of the State and to secure an uninterrupted enjoyment of slave property. The colony was to comprise about 5,000 white persons and 10,000 slaves.

Another effort to extend slavery in this section came in the unsuccessful filibustering expedition of the Tennessee lawyer, William Walker, who undertook to establish to the south in Sonora, a State with a constitution like that of Louisiana, basing his advocacy of slavery on the lofty grounds of civilizing the blacks and liberating the whites from manual labor. To explain the meaning of this expedition Bancroft considers it sufficient to point out that Jefferson Davis was Secretary of War at that time and that the Gadsden purchase was then under consideration.²⁰ In 1852 Peachy of San Joaquin introduced a resolution to allow fifty southern families to immigrate into California with their slaves. Some of them came without permission but on finding that they could not legally hold their slaves, they sent a part of them back while others became free.

In 1852 the Legislature passed a rigid Fugitive Slave Law intending to bar slavery from the State. The mischievous clause of this measure was that all slaves who had escaped into or were brought to California previous to the admission of the State to the Union were held to be fugitives, and were liable to arrest under the law, although

¹⁹ Bancroft, "*History of California*," VI, pp. 252-253.

²⁰ *Ibid.*, p. 595.

many of them had been in the State several years, during which they had accumulated considerable property. The pro-slavery element not only profited by this, but the interpretation of this law by many of the Judges enabled them to bring their slaves into the State, work them in the mines, and return to the south and back to slavery with their Negroes.²¹

If they did not wish the trouble of their return passage they auctioned them off to the highest bidder. It also

²¹ Many Negroes were returned to slavery by the Courts. An owner of slaves in Mississippi brought them voluntarily into California before the adoption of the Constitution by the State. The slaves asserted their freedom and for some months were engaged in business for themselves. The owner under the provision of the Fugitive Slave Act of 1852 brought them before the Justice of Peace, who allowed the claim of the owners and ordered them into his custody. The slaves then petitioned for a writ of habeas corpus which came before the Supreme Court and after hearing the case the Court ordered that the writ be dismissed and the slaves remanded to their owners.—*California Reports*, II, 424-426.

The case of Alvin Coffey is equally as interesting. This account was given by a lifelong friend of the subject.

Alvin Coffey was born in 1822, in Saint Louis, Missouri. He came to California with his sick master, a Mr. Duvall, who landed in San Francisco, September 1, 1849. They went to Sacramento, October 13, 1849. During the next eight months the slave earned for his master \$5,000, working in the mines, and by washing for the miners and mining for himself after night, he earned \$700 of his own. As the master continued in poor health he decided to return with Alvin to Missouri at the expiration of two years. When they reached Kansas City, Missouri, the master sold Alvin to Nelson Tindle, first taking from him the \$5,000, earned for the master, and also the \$700 earned for himself.

Nelson Tindle took a great liking to Alvin and in a short time made him overseer over a number of slaves. Alvin, however, longed to return to California and, in order to earn his freedom, bought his time from his master and took contracts to build railroads. One day Nelson Tindle said to Alvin that he was too smart a man to be a slave and ought to try and purchase his freedom. Whereupon Alvin told him if he would let him return to California, he could easily earn enough money to effect the purchase. Alvin was permitted to return to California, and in a short time sent his master the \$1,500 to pay for his freedom. Alvin then undertook to earn the money to pay for the freedom of his wife and daughters, who were slaves of Doctor Bassett, of Missouri. He earned the required sum and returned for his family. After paying for their freedom, he went with them to Canada, where he left his daughters to be educated. He and his wife Mahalia came to California. It cost him for the freedom of himself and family together with the trips to and from California about \$7000. See Bancroft, "*History of California*," VI, p. 382.

enabled them to make fortunes by selling to the slaves their freedom, charging them twice and often thrice the price he could have possibly brought on the other side of the Rocky Mountains.²² In certain southern counties of the State it was unpopular to speak in behalf of the slaves. In 1855 Chase and Day, two Abolitionists of Alameda County, were ridden on a rail, ducked and otherwise maltreated.²³ That same year expired the Fugitive Slave Law which had been renewed from year to year to enable slave-owners to reclaim fugitives who had sought refuge in that State prior to its admission to the Union. Fearing that this might be followed by other legislation hostile to their class, the Negroes held a convention in San Francisco that year to discuss their rights, their treatment by the white people, politics, principles and necessity of education. The Fugitive Slave Law was not reenacted.

²² Some of these cases are more than interesting. Daniel Rodgers came across the plains with his master from Little Rock, Arkansas, worked in the mines in Sonora, California, during the day for his master and at night for himself, earning and paying his master \$1,100 for his freedom. Soon afterward the master returned with him to Little Rock and sold him. A number of the leading white gentlemen of Little Rock raised a sum of money, paid for his freedom and set him free. William Pollock and wife from North Carolina came to California with their master who located at Cold Springs, Coloma, California. He paid \$1,000 for himself and \$800 for his wife. The money was earned by washing for the miners at night and making doughnuts. They removed to Placerville, California, and afterward earned their living as caterers. In 1849, a slaveholder brought his slave to California. Not wishing to take the Negro back to his native State, Alabama, he concluded to sell him by auction. An advertisement was put in the papers, the boy was purchased for \$1,000, by Caleb T. Fay, a strong abolitionist, who gave the boy his freedom.

A Mississippi slaveholder brought several slaves from that State and promised to give them their freedom in two years. They all ran away save one, Charles Bates, when they learned that they were already free. The owner, finding mining did not pay, started east, taking Charles with him. On the Isthmus of Panama, Charles was persuaded to leave his master. He returned to California and to Stockton with his true friend. On the street one day he was recognized by a party who had lent money to Charles's master. The debtor got out an attachment for the former slave as chattel property, and according to the State law, the Negro was put up and sold at auction. A number of anti-slavery men bought the boy for \$750 and gave him his freedom.—*California Reports*, I, 424-426.

²³ Bancroft, "*History of California*," VI, p. 716.

Many slaves, however, asserted their rights. Such was the case of Archy, a slave brought by one Charles A. Stoval from Mississippi to California in 1857. After hiring Archy out for some time Stoval undertook to return him to Mississippi. Archy escaped and was arrested as a fugitive. Stoval sued out a writ of habeas corpus for his possession and the case came before the Supreme Court for adjudication. Peter Burnett, formerly Governor, who had been appointed justice of that court by Governor Johnson in 1857 and filled the office until 1858, presided. As Burnett was a southern man, his decision was foreshadowed. He decided that although Stoval could not sustain the character of either a transient traveler or a visitor and under the general law was not entitled to Archy, but he yet held that there were circumstances connected with the particular case that might exempt him from the operation of the rules laid down. One of the circumstances was that Stoval was traveling for his health; another, that he was short of means upon arrival in California; and still another, that this was the first case of the kind. He, therefore, ordered Archy to be turned over to Stoval. Joseph G. Baldwin, who succeeded Burnett, characterized the decision as "giving the law to the North and the Negro to the South."²⁴ After being delivered to Stoval, Archy was taken to San Francisco, but his friends there sued out a writ of habeas corpus for his liberation before Judge Thomas W. Freelon, of the County of San Francisco. While this case was pending, however, Stoval swore to a new affidavit that Archy escaped from him in Mississippi and procured a warrant from George Pen Johnston, United States Commissioner, for his arrest as a fugitive slave from Mississippi. Archy was then discharged by Judge Freelon. He was immediately rearrested and taken before George Pen Johnston, who decided that Archy was in no sense a fugitive from Mississippi and discharged him.²⁵

²⁴ Bancroft, "*History of California*," VI, p. 716.

²⁵ *Ibid.*, VI, p. 716.

The tendency to free the Negroes brought there checked the importation of that class. The rights of the master to his slave, however, were not easily relinquished and the institution of slavery in California did not come to an end until 1872. Freedom, however, had to win and the pro-slavery element had to change its policy. In 1856 and 1857 efforts were made to call a convention to change the constitution so as to permit the importation of slaves, for with the expiration of the Fugitive Slave Law in 1855, slave-owners who held minors had to return them to slave States or let them go free. Since the Negroes brought into the State could in most cases become free the pro-slavery party then sought to get rid of the free Negro.

In his message to the legislature in 1850, Governor Burnett recommended the exclusion of free Negroes. This was always Burnett's hobby. He incorporated this into the laws of Oregon when he revised them in 1844. Burnett had been brought up in the South and although he had ceased to be a slaveholder, he could not think of living with Negroes as freemen. The exclusion of the blacks too had a sort of popular appeal in it. The legislature, however, was divided on the question as to what should be done with the free Negro. A bill in compliance with the wishes of the Governor was introduced but defeated. Undaunted by this, however, the enemy of the free Negroes won a victory in another quarter in enacting a law that no black or mulatto person or Indian should be permitted to give evidence in any action to which a white person was a party. The leaders of the Negroes held another convention in 1856 to protest against this law. Another bill providing for the prohibition of the immigration of free persons of color into the State was introduced in 1858 and after much debate put through both houses, but it never became a law. The black code, of course, was abrogated after the Civil War.

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